IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 810 OF 2005

Pravin Yashwant Dhanawade ...Petitioner

Versus

Jawali Sahakari Bank Ltd. & Ors. ...Respondents

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Mr. S.G. Deshmukh with Ms. Prajakta M. Kerkar, counsel for Petitioner

Mr. P.S. Gole, counsel for Respondents 1 and 2

Mr. A.H.Palekar, A.G.P. for Respondent No.3.

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CORAM: B. H. MARLAPALLE, J.

DATED: 16TH MARCH, 2005

P. C.:-

1. Heard Mr. Deshmukh with Ms. Ketkar, the learned counsel for the petitioner.

2. Rule. Respondent No.4 be deleted forthwith. The other respondents waive service. Rule is taken up for final hearing forthwith.

3. This petition takes exception to the order passed by the respondent No.3 on 15.1.2005. By the said order the Revision Application has been returned to the petitioner on the ground that the requirements of Section 154(2A) of the Maharashtra Co-operative Societies Act, 1960 ("the Act" for short), were not complied with.

4. Pursuant to the order passed on 9.3.2005, the learned A.G.P. has produced the concerned file. The Revision Application memo is at Exh.G to the petition and the prayer in the said application is to quash and set aside the order dated 26.3.2004 passed by the Recovery Officer. By the said order Recoveries were sought to be made through the salary deductions.

5. It is contended by the petitioner that these deductions must be within the parameters as set out under Rule 107(6) of the Maharashtra Co-operative Societies Rules, 1961 ("the Rules" for short) and it was stated in the Revision Application that the said parameters were not followed. Thus, the challenge in the Revision Application was not to the Recovery Certificate issued U/sec. 101 of the Act but to the order dated 26.3.2004 and therefore, it was not mandatory to comply with the requirements of sub-section 2A of Section 154 of the Act.

6. From the file placed before me by the learned A.G.P., it is evident that the petitioner was also a party to the proceedings instituted U/sec. 101 of the Act and notices were issued to the borrower as well as the sureties including the present petitioner. The limited grievance raised by the petitioner in the Revision Application before the

respondent No.3 is regarding the compliance of Rule 107(6) of the Rules and, therefore, insistence on the compliance of sub-section 2A of Section 154 of the Act was not called for. The scope of the Revision Application is only limited to examine the compliance of Rule 107(6) of the Rules and nothing further. The Revision Application does not require to examine the legality of the Recovery Certificate already issued.

7. Hence, the petition succeeds and the same is partly allowed. The impugned order dated 15.1.2005 is hereby quashed and set aside and the Revision Application filed by the present petitioner before the respondent No.3 is hereby restored to file. It is directed that the said Revision Application shall be heard and decided on its own merits and only to the extent of compliance of Rule 107(6) of the Rules, as expeditiously as possible and within a period of four weeks from the date of first appearance. The parties will appear before the respondent No.3 on 21.3.2005.

8. Rule made absolute accordingly with no orders as to costs.

9. Writ to go forthwith.